

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RAISING CANE'S USA, LLC, a Louisiana
limited liability company and RAISING
CANES RESTAURANTS, LLC dba
RAISING CANE'S CHICKEN FINGERS, a
Louisiana limited liability company,

Plaintiffs,

v.

TWINS CHICKEN LLC., a Washington limited
liability company and TWINS CHICKEN INC.,
Nevada corporation,

Defendants.

No. 2:15-cv-01298

COMPLAINT FOR TRADE DRESS
AND TRADEMARK
INFRINGEMENT

JURY DEMAND

Plaintiffs Raising Cane's USA, LLC and Raising Cane's Restaurants, LLC dba Raising Cane's Chicken (collectively, "Raising Cane's" or "Plaintiffs"), by and through their undersigned counsel, respectfully make the following allegations for their Complaint against Defendants Twins Chicken LLC and Twins Chicken Inc. (collectively, "Defendants"). These allegations are made upon knowledge with respect to Raising Cane's own acts, and upon information and belief as to all other matters.

INTRODUCTION

1. For nearly 20 years, Raising Cane's has been committed to serving the highest quality chicken finger meals quickly, in a friendly, clean restaurant environment. Raising

1 Cane's prides itself on creating a fun atmosphere for customers and employees (its "Crew")
2 alike. From Raising Cane's first restaurant—built out of an old bakery in Baton Rouge,
3 Louisiana, near Louisiana State University—the company has grown to 226 restaurants that
4 reflect its founding vision: offer a limited menu of quality chicken finger meals, a great Crew,
5 and a "cool" culture. Raising Cane's menu and advertising prominently feature "ONE LOVE®
6 – quality chicken finger meals" that are "Always Fresh. Never Frozen.®" Ex. A.

7 2. Defendants operate the Twins Chicken restaurant at Westfield Southcenter mall
8 in Tukwila, Washington. Rather than undertake the effort to develop their own distinctive
9 identity, Defendants have simply copied Raising Cane's trade dress, duplicating it in many
10 material respects. Defendants' logo is confusingly similar to Raising Cane's, as are
11 Defendants' restaurant's ubiquitous, bright-red color motif, the cups and wrappers they use,
12 their employee's uniforms, and their menus and restaurant architecture. Moreover, Defendants
13 remind consumers that they have copied Raising Cane's trade dress by making statements that
14 bring to mind Raising Cane's slogans that it has registered as trademarks. Raising Cane's uses
15 the registered slogan "ONE LOVE®," and Defendants evoke it by saying, "TENDER LOVE."
16 Raising Cane's uses the registered slogan "Always Fresh. Never Frozen.®," and Defendants try
17 to evoke that by boasting that their meals are "fresh, never frozen." Even though Twins
18 Chicken has only recently opened, consumers have already expressed confusion concerning
19 Twins Chicken's relation to Raising Cane's. As one consumer noted on Twins Chicken's
20 Facebook page, "So it seems as though [*sic*] this is a version of Raising Cane's? I hope so!"
21 Ex. B. As another consumer aptly declared on Twitter: "Hey@Raising_Canes there's an
22 imposter coming to Seattle!" Ex. C. Raising Cane's submits the following Complaint to stop
23 its would-be imposter from continuing to profit off Raising Cane's trade dress—and the
24 goodwill and quality it signals—that Raising Cane's has worked hard to develop across the
25 country.
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PARTIES

1 3. Raising Cane's USA, LLC is a Louisiana limited liability company, with its
2 principal place of business in Baton Rouge, Louisiana. Raising Cane's USA, LLC owns the
3 trademarks and trade dress rights used in connection with Raising Cane's goods and services,
4 which Raising Cane's Restaurants, LLC and its franchisees use in the operation of Raising
5 Cane's restaurants.

6 4. Raising Cane's Restaurants, LLC is a Louisiana limited liability company doing
7 business as Raising Cane's Chicken Fingers, with its principal place of business in Baton
8 Rouge, Louisiana.

9 5. Twins Chicken LLC is a Washington limited liability corporation with its
10 principal place of business in Tukwila, Washington.

11 6. Twins Chicken Inc. is a Nevada corporation with its principal place of business
12 in Las Vegas, Nevada, and is the sole member of Twins Chicken LLC.

JURISDICTION AND VENUE

13 7. This Court has subject matter jurisdiction over this action pursuant to 15 U.S.C.
14 § 1121(a) and 28 U.S.C. §§1331 and 1338(a), because it arises under the acts of Congress
15 relating to trademarks and trade dress; and pursuant to 28 U.S.C. § 1332, because this action is
16 between citizens of different states and the matter in controversy exceeds the sum or value of
17 \$75,000, exclusive of interest and costs. The court also has supplemental jurisdiction over the
18 state law claims pursuant to 28 U.S.C. §§ 1338(b) and 1367.

19 8. Defendants are subject to personal jurisdiction in this Court because they do
20 business and have infringed Raising Cane's trademarks and trade dress in this judicial district.

21 9. Venue is proper in this judicial district under 28 U.S.C. § 1391.

PLAINTIFFS' TRADE DRESS RIGHTS

22 10. Raising Cane's provides fresh, high-quality chicken finger meals in 228
23 restaurants in 17 states nationwide. Consistent with its ONE LOVE® philosophy, Raising
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1 Cane's limits its menu to a few items, serving only high quality chicken fingers, sauce, French
2 fries, coleslaw, Texas toast, and drinks.

3 11. Since 1996, Raising Cane's has developed and used a trade dress (the "Raising
4 Cane's Trade Dress") that is both distinctive and unique. The Raising Cane's Trade Dress
5 prominently features a bright red motif throughout its restaurants, including in its logo, and on
6 its drink cups, menu, signage, crew uniforms, and food wrappers.

7 12. The Raising Cane's Trade Dress also features a prominent oval logo, with the
8 word "Raising" in smaller yellow font at the top of the logo. Below that is the word "Cane's"
9 in large looping white font with a black border, set against a red background. The letter "C" in
10 "Cane's" is capitalized and spans the entire logo. The words "Chicken Fingers" appear below
11 "Cane's" in smaller, all-capital, block font. The Raising Cane's logo is reproduced below:



22 13. Raising Cane's owns U.S. Trademark Registration No. 4,494,192, for the logo
23 reproduced above, for the following goods and services: chicken tenderloins, crinkle cut
24 french-fried potatoes, creamy coleslaw; prepared meals consisting primarily of a chicken entrée
25 and a drink, sauces, honey mustard dressing, thick buttered toasted bread, sweet and
26 unsweetened iced tea, lemonade, and restaurant services. A copy of the registration certificate
27 is attached as Exhibit D.

1 14. Raising Cane's also prominently features its slogans "ONE LOVE[®]" and
2 "ALWAYS FRESH. NEVER FROZEN.[®]," throughout the Raising Cane's Trade Dress.
3 Raising Cane's owns U.S. Trademark Registration Nos. 3,033,511 and 3,769,684 for these two
4 marks. Copies of the registration certificates are attached as Exhibits E and F.

5 15. Raising Cane's has consistently and strongly promoted the Raising Cane's brand
6 and trade dress through Internet, television, and print advertisements in the 19 states in which it
7 has restaurants.

8 16. Raising Cane's has invested significant time, energy and resources to develop a
9 strong, well-known reputation in the food industry, choosing to focus on a neglected subset of
10 the market—offering chicken tender meals only—in order to stand out from the crowd.
11 Raising Cane's has developed a loyal customer base throughout the U.S. that recognizes the
12 Raising Cane's Trade Dress as indicators of the source of Raising Cane's high quality chicken
13 finger meals. As a result, the Raising Cane's Trade Dress has become, through widespread and
14 favorable public acceptance and recognition, well-known assets of substantial and incalculable
15 value symbolizing Raising Cane's, its quality meals, and its goodwill.

16 17. The Raising Cane's Trade Dress is a source identifier in the restaurant industry,
17 identifying Raising Cane's to the public as the source of Raising Cane's chicken finger meals.
18 The Raising Cane's Trade Dress is inherently distinctive and highly recognized by the
19 consuming public as an indicator of the source of Raising Cane's products. Alternatively, the
20 Raising Cane's Trade Dress has acquired distinctiveness through widespread, continuous use in
21 commerce over many years, and is highly recognizable by the consuming public as a well-
22 known indicator of the source of Raising Cane's products.

23 18. The Raising Cane's Trade Dress is not functional.

24 **DEFENDANTS' INFRINGING CONDUCT**

25 19. Defendants own and operate the Twins Chicken restaurant at Westfield
26 Southcenter mall in Tukwila, Washington. In June 2015, long after Raising Cane's had
27 established rights in the Raising Cane's Trade Dress, Defendants opened their first and only

Twins Chicken restaurant. The menu at Twins Chicken is nearly identical to the Raising Cane's menu, limited to chicken tenders, sauce, French fries, coleslaw, and a roll.

20. Twins Chicken uses trade dress features in its storefront and packaging ("Twins Chicken Trade Dress") that are confusingly similar to the Raising Cane's Trade Dress. This infringing Twins Chicken Trade Dress includes an oval logo in a bright red shade identical to the Raising Cane's Trade Dress—with "Twins" in looping, white font with a black border and extra-large "T." The logo has three yellow ovals above "Twins," like Raising Cane's logo has the word, "Raising," in yellow font above "Cane's." Below "Twins" are the words "CHICKEN TENDERS" in the same font and all-caps case that Raising Cane's uses for the words "CHICKEN FINGERS" that appear in the same position in its logo. The Twins Chicken logo is reproduced below:



21. The Twins Chicken logo is featured prominently throughout Twins Chicken product packaging, its uniforms, and its restaurant.

22. Twins Chicken's restaurant has a confusingly similar appearance to Raising Cane's restaurants because of its use of a bright red color throughout the restaurant—the walls, fixtures, employee uniforms, signs, menu, and packaging for its menu items. Twins Chicken also uses a confusingly similar menu, menu board and menu design that evoke those of Raising Cane's. Ex. G

23. Moreover, Raising Cane's uses the registered slogan, "ALWAYS FRESH. NEVER FROZEN.®," and Defendants evoke it by using the phrase, "fresh, never frozen." Ex. H. Similarly, Raising Cane's uses the registered slogan, "ONE LOVE®," and Defendants evoke it by using the phrase, "TENDER LOVE." Ex. I.

24. Defendants have adopted the Twins Chicken Trade Dress that forms the basis of the infringing acts complained of herein, with knowledge of Raising Cane's trademark and trade dress rights. There are eight Raising Cane's restaurants in the Las Vegas area, where Defendant Twins Chicken, Inc. has its corporate office, with the closest one just 1.6 miles away from that office.

DEFENDANTS' ACTIONS ARE LIKELY TO CONFUSE CONSUMERS

25. Defendants' confusingly similar trade dress is likely to confuse consumers. Indeed, it already has. On Twins Chicken's Facebook page, a consumer wrote, "So it seems as though [sic] this is a version of Raising Cane's? I hope so!" Ex. B. On Twitter, a consumer alerted Raising Cane's that Twins Chicken had copied Raising Cane's: "Hey @Raising_Canes there's an imposter coming to Seattle!" Ex. C. On Yelp, a consumer said that "Twins [Chicken] is ALMOST a perfect match" of Raising Cane's. Ex. I. And another consumer asked Twins Chicken on Twitter if it was "related" to Raising Cane's: "@TwinsChicken are y'all related to @Raising_Canes?" Ex. J.

COUNT 1: TRADE DRESS INFRINGEMENT

26. Plaintiffs incorporate the allegations of Paragraphs 1-25 as if fully set forth herein.

27. Defendants' sale of chicken tenders meals and providing restaurant services in the Twins Chicken Trade Dress, as alleged above, is likely to cause confusion, mistake and/or deception among the relevant public, including consumers, as to the origin, sponsorship, or approval of Defendants' goods and services with respect to Raising Cane's, and to mislead the public into thinking that Raising Cane's is the origin of, or has sponsored or approved,

1 Defendants' goods and services. Defendants' actions irreparably harm the value of Raising
 2 Cane's Trade Dress and injure Raising Cane's reputation and goodwill.

3 28. Defendants' actions therefore are likely to cause confusion, to cause mistake or
 4 to deceive consumers as to the origin, sponsorship or approval of Defendants' goods and
 5 services in violation of Section 43(a)(1)(A) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(A) .

6 29. Defendants have created, adopted, and used in interstate commerce the
 7 confusingly similar Twins Chicken Trade Dress with full knowledge of Plaintiffs' right in the
 8 Raising Cane's Trade Dress. The sale and promotion of chicken finger meals in the Twins
 9 Chicken Trade Dress has been done in bad faith and with a willful and deliberate intent to pass
 10 off its meals as those of Plaintiffs and to trade on the significant goodwill developed in the
 11 Raising Cane's Trade Dress. This willful infringement makes this an exceptional case within
 12 the meaning of 15 U.S.C. § 1117(a).

13 30. Unless restrained by the Court, Defendants will continue to engage in their
 14 scheme to violate the longstanding rights of Raising Cane's, to mislead the public, and to trade
 15 upon and injure Raising Cane's reputation and goodwill. Defendants' infringement has
 16 damaged Raising Cane's, has resulted in unjust enrichment to Defendants, and has caused and
 17 will continue to cause, unless enjoined by the Court, substantial and irreparable injury to
 18 Raising Cane's and the public, for which damage and injury Raising Cane's has no adequate
 19 remedy at law.

20 **COUNT 2: TRADEMARK INFRINGEMENT**

21 31. Plaintiffs incorporate the allegations of Paragraphs 1-30 as if fully set forth
 22 herein.

23 32. The Twins Chicken logo depicted in Paragraph 20 above is a colorable imitation
 24 of Raising Cane's federally-registered logo depicted in Paragraph 12 above.

25 33. Defendants' actions are likely to cause confusion, to cause mistake or to deceive
 26 consumers as to the origin, sponsorship or approval of Defendants' goods and services in
 27

1 violation of Sections 32(1) and 43(a)(1)(A) of the Lanham Act, 15 U.S.C. §§ 1114(a) and
2 1125(a)(1)(A).

3 34. Defendants have created, adopted, and used in interstate commerce the
4 confusingly similar Twins Chicken logo with full knowledge of Plaintiffs' right in the Raising
5 Cane's logo. The sale and promotion of chicken finger meals in connection with the Twins
6 Chicken Logo has been done in bad faith and with a willful and deliberate intent to pass off its
7 meals as those of Plaintiffs and to trade on the significant goodwill developed in the Raising
8 Cane's logo. This willful infringement makes this an exceptional case within the meaning of
9 15 U.S.C. § 1117(a).

10 35. Unless restrained by the Court, Defendants will continue to engage in their
11 scheme to violate the longstanding rights of Raising Cane's, to mislead the public, and to trade
12 upon and injure Raising Cane's reputation and goodwill. Defendants' infringement has
13 damaged Raising Cane's, has resulted in unjust enrichment to Defendants, and has caused and
14 will continue to cause, unless enjoined by the Court, substantial and irreparable injury to
15 Raising Cane's and the public, for which damage and injury Raising Cane's has no adequate
16 remedy at law.

17 **COUNT 3: TRADE DRESS INFRINGEMENT**
18 **UNDER WASHINGTON COMMON LAW**

19 36. Plaintiffs incorporate the allegations of Paragraphs 1-35 as if fully set forth
20 herein.

21 37. The actions of Defendants described herein constitute a violation of Plaintiffs'
22 trade dress rights under Washington common law.

23 **COUNT 4: VIOLATION OF WASHINGTON CONSUMER PROTECTION ACT/**

24 38. Plaintiffs incorporate the allegations of Paragraphs 1-37 as if fully set forth
25 herein.

26 39. The actions of Defendants described herein affect and are injurious to the public
27 interest, and constitute unfair and deceptive acts or practices and unfair methods of competition

1 in the conduct of trade or commerce in violation of RCW 19.86.020 that have harmed Plaintiffs
2 in their business and property. Plaintiffs are entitled to recover damages, treble damages, and
3 attorneys' fees pursuant to RCW 19.86.090.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiffs pray for the following relief:

6 1. A judgment ordering Defendants and their servants, agents, employees, related
7 companies, successors and assigns, and all persons acting in concert with Defendants or any of
8 them, to be preliminarily and permanently enjoined from: using the Raising Cane's Trade Dress
9 and other marks, or any colorable imitation thereof, as a trademark, service mark, trade name or
10 otherwise, including but not limited to any name or mark confusingly similar to or likely to
11 cause confusion with the Raising Cane's Trade Dress and other marks; representing by any
12 means whatsoever, directly or indirectly, that Defendants or any goods or services offered by
13 Defendants, are associated in any way with Plaintiffs or their goods or services, and from
14 otherwise taking any other action likely to cause confusion, mistake or deception on the part of
15 purchasers or consumers; and doing any other acts or things calculated or likely to cause
16 confusion or mistake in the mind of the public or to lead purchasers or consumers into
17 believing that Defendants' goods or services come from or are the goods or services of
18 Plaintiffs, or are somehow sponsored or underwritten by, or affiliated with, Plaintiffs, and from
19 otherwise unfairly competing with Plaintiffs or misappropriating that which rightfully belongs
20 to Plaintiffs.

21 2. A judgment requiring Defendants to deliver to Plaintiffs for destruction all
22 goods, signs, advertisements, literature, business forms, cards, labels, packages, wrappers,
23 pamphlets, brochures, receptacles, and any other written or printed material in their possession
24 or under their control which contain, encompass or depict the Raising Cane's Trade Dress or
25 other marks, or any colorable imitations thereof or any trade dress confusingly similar thereto;

26 3. A judgment ordering Defendants to file with this Court and to serve on Plaintiffs
27 within thirty days after the service of the injunction a report in writing under oath, setting forth

1 in detail the manner and form in which Defendants have complied with the foregoing
2 injunction.

3 4. A judgment ordering that Plaintiffs recover Defendants' profits; and Plaintiffs'
4 damages, which amount may be trebled by the Court, pursuant to 15 U.S.C. § 1117(a) and the
5 Washington Consumer Protection Act, RCW 19.86.090.

6 5. A judgment ordering Defendants to pay Plaintiffs all their reasonable taxable
7 costs, disbursements and attorneys' fees in a sum and manner deemed appropriate by this Court
8 based on the deliberate and willful acts of Defendants pursuant to 15 U.S.C. § 1117(a) and
9 based on Defendants' violation of the Washington Consumer Protection Act; and

10 6. Such other and further relief as the Court may deem just and proper.

11 **JURY DEMAND**

12 Plaintiffs demand a trial by jury of all issues so triable.

13 DATED this 14th day of August, 2015.

14 DAVIS WRIGHT TREMAINE LLP
15 Attorneys for Plaintiffs Raising Cane's USA, LLC
16 and Raising Cane's Restaurants, LLC

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